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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No. 214 OF 2006
IN
SUIT No. 3387 OF 2004

Aniket Securities & Finance Company Pvt. Ltd. Plaintiff

Vs.

Mr. Krishna K. Birla Defendants.

Ms. A. R. Lambey i/b M/s. Lambey & Co. for plaintiff.

Mr. Ajay Kandahar, advocate for defendant.

CORAM : S. A. BOBDE, J.

DATE : FEBRUARY 22, 2007.

P.C.

. By this notice of motion, the plaintiffs seek a direction to the defendant to furnish security for a sum of Rs. 6,67,514/-i.e. the suit claim, or restraining the defendants from transferring certain shares, lying at D-Mat account, so also restraining the respondents from returning certain shares belonging to the defendant in the D-Mat account. The suit is for recovery of amount towards charges for installation of V-Sat equipment (NSE Terminal) at the office

of the defendants at Muzaffarpur in Bihar. The plaintiff appointed the defendant who is a member of NSE as his constituent, in order to facilitate transaction in Bihar. In order to facilitate transaction, the plaintiff caused the installation of V-Sat equipment in the defendant's office at Muzaffarpur. By this suit, the plaintiff claims charges of V-Sat equipment, from the defendant.

2. At this stage, there is no evidence of the form of any contract between the plaintiff and defendant under which the defendant is liable to pay charges of V-Sat equipment to plaintiff, who is the member of NSE. There is no dispute that such equipment is given by the NSE only to its members and not to their constituents. This V-Sat equipment is therefore, a facility extended by the plaintiff to the defendant apparently for mutual benefit of both. At this stage, the liability of the defendant, if any, is not clear.

3. Ms. A. R. Lambey, learned counsel

for the plaintiff relied on an Arbitration Award, dated 14th May 2002, in which the learned Arbitrators of the Stock Exchange have declined to grant credit to the defendant for the amount paid by him towards charges of the V-Sat equipment to the NSE. The Arbitrators have held that the defendant is not entitled to claim any refund or return of the amount from the applicant. This by itself does not establish the liability of the defendant towards the plaintiff for installation of V-Sat equipment at Muzaffarpur in Bihar. That liability will depend upon the contract between the parties. Presently, there is no material before the Court from which an inference can be drawn that the defendant is liable. Primarily having regard to the fact that the equipment is given by the NSE only to its members, such as the plaintiff, the liability cannot be foisted on the defendant at this stage. Hence, there is no merit in the prayer for injunction or furnishing security, as prayed for. Ms. Lambey, the learned counsel for the plaintiff submitted that the defendant has furnished a false

undertaking to this Court regarding the property at Muzaffarpur. The plaintiff shall be entitled to take action as may be advised in regard to that. In the circumstances,

Notice of Motion is hereby dismissed.

Sd/-
[S.A. BOBDE, J.]